

## SENATE BILL NO. 497

INTRODUCED BY TROPILA

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TRANSFERABILITY OF THE LOCATION OF RETAIL BEER LICENSES AND ALL-BEVERAGES LIQUOR LICENSES THAT ARE BROUGHT TO WITHIN 5 MILES OF A CITY OR TOWN BECAUSE OF ANNEXATION; AMENDING SECTIONS 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-4-105, MCA, is amended to read:

**"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the

1 number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5  
2 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated  
3 within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use  
4 in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must  
5 be determined on the basis of the combined populations of both municipalities and may not exceed the  
6 limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or  
7 incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for  
8 licensing to the nearest corporate boundary of the city or town.

9 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that  
10 are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of  
11 the limitations;

12 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer  
13 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military  
14 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a  
15 recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a  
16 period of 5 years or more prior to January 1, 1949;

17 (e) the number of retail beer licenses that the department may issue for use at premises situated outside  
18 of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the  
19 corporate limits or for use at premises situated within any unincorporated area must be determined by the  
20 department in its discretion, except that a retail beer license may not be issued for any premises so situated  
21 unless the department determines that the issuance of the license is required by public convenience and  
22 necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e).  
23 The owner of the license whose premises are situated outside of an incorporated city or town may offer  
24 gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter  
25 5, part 3, 5, or 6.

26 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to the  
27 department for an amendment to the license permitting the holder to sell wine as well as beer. The department  
28 may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for  
29 consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for  
30 beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine

for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

~~(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after [the effective date of this act] may be transferred to another owner, but if the incorporated city or town has retail beer licenses in excess of the limitations of subsection (1)(a) or (1)(b), the location of the license may not be changed, other than to a location that is not within 5 miles of an incorporated city or town. If an additional license may be issued within an incorporated city or town under subsection (1)(a) or (1)(b), the department shall fill the quota, by lottery, from a license that is not authorized to change location under this subsection. The chosen license is no longer subject to transfer restrictions.~~

(4) A LICENSE ISSUED UNDER SUBSECTION (1)(E) THAT BECOMES LOCATED WITHIN 5 MILES OF AN INCORPORATED CITY OR TOWN BECAUSE OF ANNEXATION AFTER [THE EFFECTIVE DATE OF THIS ACT] MAY NOT BE TRANSFERRED TO ANOTHER LOCATION WITHIN THE CITY QUOTA AREA FOR 5 YEARS FROM THE DATE OF THE ANNEXATION.

**Section 2.** Section 16-4-201, MCA, is amended to read:

**"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, {an all-beverages license}, in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell ~~such~~ alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of ~~such~~ those cities and towns ~~shall~~ must be determined on the

1 basis of population prescribed in 16-4-502 as follows:

2 (a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate  
3 limits of ~~such the~~ towns, not more than two retail licenses;

4 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000  
5 inhabitants and within a distance of 5 miles from the corporate limits of ~~such the~~ cities and towns, three retail  
6 licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

7 (c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate  
8 limits ~~thereof of the cities~~, five retail licenses for the first 3,000 inhabitants and one retail license for each  
9 additional 1,500 inhabitants.

10 (2) The number of the inhabitants in ~~such~~ cities and towns, exclusive of the number of inhabitants  
11 residing within a distance of 5 miles from the corporate limits ~~thereof of the cities or towns~~, ~~shall govern~~ governs  
12 the number of retail licenses that may be issued for use within ~~such the~~ cities and towns and within a distance  
13 of 5 miles from the corporate limits ~~thereof of the cities or towns~~. If two or more incorporated municipalities are  
14 situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for  
15 use in both of ~~such the~~ municipalities and within a distance of 5 miles from their respective corporate limits ~~shall~~  
16 must be determined on the basis of the combined populations of both of ~~such the~~ municipalities and may not  
17 exceed the ~~foregoing~~ limitations in subsection (1) or this subsection. The distance of 5 miles from the corporate  
18 limits of any incorporated city or incorporated town ~~shall~~ must be measured in a straight line from the nearest  
19 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

20 (3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under  
21 16-4-209, which are in excess of the ~~foregoing~~ limitations ~~shall~~ in subsections (1) and (2) must be renewable,  
22 but ~~no~~ new licenses may not be issued in violation of ~~such the~~ limitations.

23 (4) ~~Such~~ The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and  
24 nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers'  
25 club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered  
26 veterans' organization or any lodge of a recognized national fraternal organization if ~~such the~~ veterans' or  
27 fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

28 (5) The number of retail all-beverages licenses that the department may issue for use at premises  
29 situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles  
30 from the corporate limits ~~thereof of a city or town~~ may not be more than one license for each 750 population of

1 the county after excluding the population of incorporated cities and incorporated towns in ~~such~~ the county.

2 ~~(6) An all-beverages license issued under subsection (1) that becomes located within 5 miles of an~~  
3 ~~incorporated city or town because of annexation after [the effective date of this act] may be transferred to another~~  
4 ~~owner, but if the incorporated city or town has all beverages licenses in excess of the limitations of subsection~~  
5 ~~(1), the location of the license may not be changed, other than to a location that is not within 5 miles of an~~  
6 ~~incorporated city or town. If an additional license may be issued within an incorporated city or town under~~  
7 ~~subsection (1), the department shall fill the quota, by lottery, from a license that is not authorized to change~~  
8 ~~location under this subsection. The chosen license is no longer subject to transfer restrictions.~~

9 ~~(6) AN ALL-BEVERAGES LICENSE ISSUED UNDER SUBSECTION (5) THAT BECOMES LOCATED WITHIN 5 MILES OF~~  
10 ~~AN INCORPORATED CITY OR TOWN BECAUSE OF ANNEXATION AFTER [THE EFFECTIVE DATE OF THIS ACT] MAY NOT BE~~  
11 ~~TRANSFERRED TO ANOTHER LOCATION WITHIN THE CITY QUOTA AREA FOR 5 YEARS FROM THE DATE OF ANNEXATION."~~

12  
13 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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